

JAMES BOATMAN

IBLA 84-321      Decided May 22, 1985

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting notice of intent to hold. OR MC 16260 and OR MC 16261.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Failure to file instruments required by 43 U.S.C. § 1744 (1982) and 43 CFR 3833.2 in the proper BLM office within the time period prescribed constitutes abandonment of mining claim.

2. Evidence: Presumptions -- Evidence: Sufficiency -- Rules of Practice: Evidence

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome by submission of a statement that a document was mailed. Rather, BLM's denial of receipt of a document can be rebutted only by probative evidence.

APPEARANCES: James Boatman, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

James Boatman has appealed from a letter decision of the Oregon State Office, Bureau of Land Management (BLM), dated January 20, 1984. In its decision BLM stated it had not received either an affidavit of assessment work or a notice of intention to hold the Big Ben #1 and 2 unpatented mining claims (OR MC 16260 and OR MC 16261) on or before December 30, 1982. Therefore, appellant's claims were deemed to be abandoned and void according

to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982). As a result BLM rejected the 1983 filing document provided by appellant to show proof of intent to hold the claims. <sup>1/</sup>

The BLM case records for these pre-1976 mining claims contain copies of the notices of location filed July 3, 1979, affidavits of assessment work filed with BLM in 1979, 1980, and 1981, and a quitclaim deed filed with BLM on October 18, 1982, transferring ownership of the claims to James E. Boatman and Kevin E. Boatman.

Appellant states on appeal that he filed an affidavit of assessment work for 1982. He states further he does not have documentary proof that his affidavit was filed with BLM. In support of his appeal, however, he has supplied a copy of a proof of labor filed in the records of Curry County, Oregon.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982), requires the owner of an unpatented mining claim located on or before October 21, 1976, to file with BLM, on or before December 30 of each year, an affidavit of assessment work or a notice of intent to hold the mining claim. 43 CFR 3833.2-1. Failure to file results in a conclusive presumption of abandonment by the owner. 43 U.S.C. § 1744(a) (1982); 43 CFR 3833.4. The responsibility for compliance with this recordation requirement rests with the owner of the unpatented mining claim. Those claims for which timely filings are not made are extinguished by operation of law; intent is irrelevant if the necessary filings are not made. See United States v. Locke, 105 S. Ct. 1785, 1796 (1985).

[2] Appellant argues he submitted the required 1982 affidavit, but admits he lacks proof it was filed with BLM. The record does not show BLM received the document. As was stated in Mackay Bar Corp., 75 IBLA 57, 60 (1983):

[A] presumption of regularity \* \* \* supports the official acts of public officers in the proper discharge of their duties. See, e.g., Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Phillips Petroleum Co., 38 IBLA 344 (1978). On the other hand, we have recognized the existence of another presumption that mail properly addressed, stamped, and deposited in an appropriate receptacle is duly delivered. See generally Donald E. Jordan, 35 IBLA 290 (1978). When these two presumptions have come into conflict, we have traditionally accorded greater weight to the former. See David F. Owen, 31 IBLA 24 (1977). This choice has been predicated on considerations of public policy and supported by burden of proof analysis. Bernard S. Storper, 60 IBLA 67, 70 (1981) aff'd, Storper v. Watt, No. 82-0449 (D.D.C. Jan. 20, 1983).

<sup>1/</sup> Appellant's notice of intent to hold, filed in 1983, seeks deferment of assessment work for 1983. See 30 U.S.C. § 28(b) (1982); 43 CFR 3833.2-3; 43 CFR Subpart 3852. No opinion is expressed covering this notice since, under the circumstances of this case, the claims are extinguished by failure to file the 1982 proof of labor.

When an appellant maintains that a document was sent to BLM, but BLM has no record of it, the presumption of regularity works against a finding that BLM received the document and subsequently lost it through mishandling. Glenn W. Gallagher, 66 IBLA 49, 51 (1982). Although the Board has held that the presumption of regularity may be rebutted, e.g., Bruce L. Baker, 55 IBLA 55 (1981); L. E. Garrison, 52 IBLA 131 (1981), the presumption is not overcome by a statement that a missing document was mailed to BLM. Glenn W. Gallagher, *supra* at 52, and cases cited therein. Because appellant did not submit any probative evidence to show a filing took place, he has not overcome that presumption. H. E. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Oregon State Office is affirmed.

Franklin D. Arness  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Bruce R. Harris  
Administrative Judge.

